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JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, A. D. 1896.

No. 615.

IN THE MATTER OF THE APPLICATION OF THE CITY OF HAMMOND FOR A WRIT OF CERTIORARI

IN THE CASE OF

CAROLINE M. FORSYTH,
Appellant,

VS.

THE CITY OF HAMMOND AND WILLIAM KLEIHEGE,
TREASURER OF THE CITY OF HAMMOND,
Appellees.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ADDITIONAL BRIEF IN BEHALF OF THE CITY OF HAMMOND.

CHARLES H. ALDRICH,
FRANK F. REED,
E. D. CRUMPACKER,
Solicitors for City of Hammond.

Eastman Bros., Law Printers, 358 Dearborn St., Chicago.

IN THE

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

A grave error of fact, found in both briefs filed in behalf of Caroline M. Forsyth, leads us to file this addition to our former brief filed in support of the petition for *certiorari*. With this addition we are content to submit the cause upon the argument already made. Mr. Miller states (p. 43, his brief):

> "Without an elaborate discussion of these authorities, it is enough for us to say that in none of them is the rule of *Burgess* v. *Seligman* criticized or modified, nor do any of them meet the fact that the decision in this case was made before any decision upon the particular point involved was made by the

> Supreme Court of Indiana. This court found the question unsettled, made its decision, and, upon well-settled principles, was under no obligation to change its rule to conform to a decision of the Supreme Court of Indiana subsequently made, especially where, as in the case at bar, the decision of the last-named court was at variance with the fundamental principles of government. Judge Woods' opinion distinctly shows that the decision of the Circuit Court of Appeals was made before that of the Supreme Court of Indiana on this question."

Mr. Merrifield states (p. 30, his brief):

> "The principal question here involved was first raised in the Federal Circuit Court. It was not raised in the Supreme Court of Indiana until after the bill in this case was filed, and the question was not decided by that court until the decision of the Circuit Court of Appeals in this case had been in fact made."

And this is subsequently repeated in other places in these briefs.

The opinion of the Circuit Court of Appeals bears date January 16, 1896 (71 Fed R., 443), and in this opinion the action of the Supreme Court of the State of Indiana upon the motion of Mrs. Forsyth for a rehearing is fully discussed. (71 Fed. R., 453.)

This action of the Supreme Court, establishing the law in the State of Indiana, was taken on November 7, 1895. (41 N. E. Rep., 950.)

The mistake of counsel doubtless arises from the following language found in the opinion of the Circuit Court of Appeals (71 Fed. R., 453):

> "The hearing upon this appeal had been had before the decision upon the petition for a rehearing in the state court was rendered, and before we had knowledge of it we had in consultation agreed upon the opposite view. That decision—in which, for the

> first time, the court has recognized the right of appeal to the Circuit Court from a decision of a county board refusing to order an annexation of territory to a city—it is clear, was the result largely of a misapprehension of the Grusenmeyer case and in part of the decision below in this case, which itself is due partly to the same misapprehension and partly to the supposed effect of the constitutional inhibition against special legislation—a matter which we do not regard as of controlling significance. Under the circumstances, are we required to yield our judgment to the authority of that ruling?"

This statement is as to the *date of knowledge* by the court of the Indiana decision, not as to the *date of action*.

There are facts in the record which make the suggestion of counsel improbable to the last degree.

The case was argued October 30, 1895, and on that date the following order was entered:

> "It is ordered by the court that the appellee be and is hereby allowed fifteen days from this date in which to file brief in this cause." (Record, 34.)

And on November 16, 1895 (Record, 35), the following order was entered:

> "It is ordered by the court that the time allowed appellee in which to file his brief in this cause be and the same is hereby extended three days."

It is hardly to be supposed that the court was accepting briefs and extending the time therefor after it had decided the case; at least it is thought that courts do not ordinarily decide cases before they have been briefed by counsel or engage in any such play as counsel's statement would imply. Either the original date granted the then counsel for the City of Hammond, or the extended date, brings the time long after the date of the opinion upon the petition for rehearing (November 7, 1895). If the court had reached its conclusion before receiving briefs of

counsel, it might serve to account for the character of the decision, but we are unable to indulge even this presumption in favor of the court, and the counsel are plainly in error in the statements quoted.

Again, a mere decision or conclusion, reached as a mental operation and apart from expression in opinion, may be potent as affecting the probable or prospective rights of litigants, but has no effect as law until made a matter of record; and as such the Circuit Court of Appeals can only speak from January 16, 1896.

At this time, and from November 7th, 1895, as between these same parties upon this identical issue, after the most painstaking investigation, in which as able counsel as could have been selected from the bar participated, the law of the State of Indiana and the proper construction of the constitution of the State of Indiana had been settled by the highest court of that State.

To place against this authoritative declaration the impressions, or, as counsel would call them, the conclusions, of the judges of the Federal Court, formed without the benefit of briefs by counsel for the City of Hammond, is, or ought to be, unavailing. The opinion of the Supreme Court of Indiana was in line with many other decisions by that court and in conflict with none. The opinion of the Circuit Court of Appeals does violence to all these, affords relief to a litigant who has had her day in court, and refuses to the judicial tribunals of Indiana the right to finally construe the statutes and constitution of that State in a matter purely local in character and in which the federal government can have no possible concern.

The writer of this brief, though entertaining the highest respect for the members of the court below, would feel himself derelict to his duty as counsel in this case and

as a citizen if he hesitated to call attention to the fact that such an opinion is "revolutionary and dangerous in all its tendencies" and subversive of the fundamental principles of our government.

Respectfully submitted,

CHARLES H. ALDRICH,
Solicitor for the City of Hammond.

FRANK F. REED,
E. D. CRUMPACKER,
Of Counsel.

FILED.
MAR 15 1897
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 615.

CAROLINE M. FORSYTH, APPELLANT,

vs.

THE CITY OF HAMMOND ET AL.

SUGGESTION AS TO INDIANA LEGISLATIVE RECORD SINCE ARGUMENT OF CASE.

CHARLES H. ALDRICH,
FRANK F. REED,
E. W. CRUMPACKER,
Solicitors for the City of Hammond.

(16,394)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 615.

CAROLINE M. FORSYTH, APPELLANT,

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THE CITY OF HAMMOND ET AL.

SUGGESTION AS TO INDIANA LEGISLATIVE RECORD SINCE ARGUMENT OF CASE.

Since the argument of the above-entitled cause the landowners who had litigated the validity of the annexation proceedings and all questions relating thereto arising under the statutes and constitution of the State of Indiana and had been defeated by the decision of the supreme court of that State have sought relief at the hands of the legislature of the State of Indiana.

As shown by the accompanying record, the legislature, which has now adjourned, refused to enact a bill designed to *disannex* the lands in controversy, thus in effect confirming the action of the executive and judicial departments of the State government.

It has seemed just to our client that this fact should be

Harfley, Hall, Harris, Henderson, Herod, Hicks, James, Kayser, Kell, Kelly, Littleton, Mann, Marsh, Miller, O'Bannon, Packard, Purvis, Randolph, Record, Rhoades, Rifenburg, Ross, Schaal, Schoonover, Sence, Smith of Allen, Smith of Tippecanoe, Stetler, Sutton, Swope, Thomas, Titus, Wair, Wallrath, Willoughby, and Wise. Total, 53.

Those voting in the negative were:

Messrs. Barlow, Blankenship, Butler, Elliott of Washington, Fornshell, Gibson, Goddard, Hubbard, Jernegan, Jones, Knepper, Kratz, Lambert, Linck, McCart, McCrea, Medsker, Monyhan, Morgan, Morris, Newton, Nicholson, Patterson of Fulton, Peckinpaugh, Remington, Reynolds, Roose, Roots, Schrader, Shideler, Spooner, Williams, and Woodruff. Total, 33.

So the motion by Mr. Hedgcock to strike out the enacting clause prevailed.

I hereby certify that the foregoing is a correct transcript of that part of the Journal of the House of Representatives of the Sixtieth General Assembly of the State of Indiana as it relates to House bill No. 475, a true copy of which is hereunto attached and marked Exhibit "A."

Witness my signature this 9th day of March, 1897.

J. O. LAMBERT,
Assistant Clerk of the House of Representatives.

EXHIBIT "A."

House Bill No. 475.

A bill for an act to disannex certain lands and territory from the city of Hammond, and declaring an emergency.

Whereas, the city of Hammond filed and presented its petition to the board of commissioners of Lake county at the June session thereof, for the year 1893, for the annexation of certain lands and territory described as follows, to

wit: "Beginning at a point on the Indiana and Illinois State line, which point is the southwest corner of section number thirteen (13) in township thirty-seven (37) north, range ten (10) west of the second (2d) principal meridian; thence running easterly along the south line of said section thirteen (13) and along the south line of section eighteen (18) in township thirty-seven (37) north, range nine (9) west of the second (2d) principal meridian to the southeast corner of said section eighteen (18); thence running northerly along the east line of said section eighteen (18) and along the east line of section seven (7) in same township and range, to the northeast corner of the southeast quarter of said section seven (7); thence running westerly along the north line of the southeast quarter of said section seven (7) to the northwest corner of said southeast quarter of said section seven (7); thence running northerly along the east line of the northwest quarter of said section seven (7) and along the east line of the west half of section six (6) in township thirty-seven (37) north, range nine (9) west of the second principal meridian to the intersection of said line with the meander line of the south shore of Lake Michigan; thence running northwesterly along the meanderings of the south shore of said lake to the intersection of said meander line with the Indiana and Illinois State line; thence running southerly along said State line to the place of beginning." And said board of commissioners decided against said petition and said city appealed from said decision and eventually procured such proceeding to be transferred to the Porter circuit court, where the December term of said court for the year 1893, there was a trial of the same, resulting in a decree of said court, that said lands and territory be annexed to the said city of Hammond, and whereas such annexation of said lands to said city was wholly unnecessary for any municipal or legitimate purpose whatever, and imposed heavy and unreasonable burdens upon the property-owners and tax-payers of said territory, without their

brought to the attention of the Court without comment. We therefore submit a certified copy of the proceedings upon this bill under the seal of the secretary of the State of Indiana.

CHARLES H. ALDRICH,
FRANK F. REED,
E. W. CRUMPACKER,
Solicitors for the City of Hammond.

Certificate.

STATE OF INDIANA, *Office of the Secretary of State,* } ss:

I, William D. Owen, secretary of state of the State of Indiana, do hereby certify that the attached papers contain a full, true, and complete copy of House bill No. 475 and a full, true, and complete copy of Senate bill No. 440, each being a bill for an act to disannex certain lands and territory from the city of Hammond, Indiana, and declaring an emergency; also a full, true, and complete transcript of the records of both House and Senate Journals of the sixtieth session of Indiana General Assembly relating to the above-described bills.

In witness whereof I have hereunto set my hand and affixed the seal of the State of Indiana, at the city of Indianapolis, this 9th day of March, A. D. 1897.

[SEAL.] WILLIAM D. OWEN,
Secretary of State

Transcript of the record, as shown by the House Journal of the Sixtieth General Assembly of the State of Indiana, of the action taken by the House on House bill No. 475.

Said Journal of February 3, 1897, relative to said bill contains the following:

Mr. Linck introduced House bill No. 475, entitled "A bill for an act entitled An act to disannex certain lands and

territory from the city of Hammond and declaring an emergency;" which was read a first time and referred to the committee on the judiciary.

Relative to said House bill No. 475, the House Journal of February 4, 1897, shows the following:

Mr. Linck, from the committee on the judiciary, submitted the following report:

Mr. Speaker, your committee on the judiciary, to whom was referred House bill No. 475, entitled "A bill for an act entitled An act to disannex certain lands and territory from the city of Hammond and declaring an emergency," have had the same under consideration and beg leave to report the same back to the House with the recommendation that said bill do pass.

Which report was concurred in.

The House Journal of February 25, 1897, relative to said bill contains the following record:

House bill No. 475, entitled "A bill for an act entitled An act to disannex certain lands and territory from the city of Hammond and declaring an emergency."

Which was read a second time and the bill was ordered to be engrossed.

The House Journal of March 1, 1897, relative to said House bill 475 contains the following:

"Engrossed House bill No. 475, entitled 'A bill for an act entitled An act to disannex certain lands and territory from the city of Hammond and declaring an emergency.'"

Which was read a third time.

The question being, shall the bill pass?

Mr. Hedgcock moved to strike out the enacting clause, and on that motion Messrs. O'Bannon and Hedgcock demanded the ayes and noes.

Those voting in the affirmative were:

Messrs. Archibald, Bowers, Brown, Canada, Clauser, Claycomb, Cockrum, Downey, East, Engle, Eichhorn, Elliott of Henry, Elliott of Marion, Feist, Furness, Geisel, Graham,

Harfley, Hall, Harris, Henderson, Herod, Hicks, James, Kayser, Kell, Kelly, Littleton, Mann, Marsh, Miller, O'Bannon, Packard, Purvis, Randolph, Record, Rhoades, Rifenburg, Ross, Schaal, Schoonover, Sence, Smith of Allen, Smith of Tippecanoe, Stetler, Sutton, Swope, Thomas, Titus, Wair, Wallrath, Willoughby, and Wise. Total, 53.

Those voting in the negative were:

Messrs. Barlow, Blankenship, Butler, Elliott of Washington, Fornshell, Gibson, Goddard, Hubbard, Jernegan, Jones, Knepper, Kratz, Lambert, Linck, McCart, McCrea, Medsker, Monyhan, Morgan, Morris, Newton, Nicholson, Patterson of Fulton, Peckinpaugh, Remington, Reynolds, Roose, Roots, Schrader, Shideler, Spooner, Williams, and Woodruff. Total, 33.

So the motion by Mr. Hedgcock to strike out the enacting clause prevailed.

I hereby certify that the foregoing is a correct transcript of that part of the Journal of the House of Representatives of the Sixtieth General Assembly of the State of Indiana as it relates to House bill No. 475, a true copy of which is hereunto attached and marked Exhibit "A."

Witness my signature this 9th day of March, 1897.

J. O. LAMBERT,

Assistant Clerk of the House of Representatives.

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House Bill No. 475.

A bill for an act to disannex certain lands and territory from the city of Hammond, and declaring an emergency.

Whereas, the city of Hammond filed and presented its petition to the board of commissioners of Lake county at the June session thereof, for the year 1893, for the annexation of certain lands and territory described as follows, to

wit: "Beginning at a point on the Indiana and Illinois State line, which point is the southwest corner of section number thirteen (13) in township thirty-seven (37) north, range ten (10) west of the second (2d) principal meridian; thence running easterly along the south line of said section thirteen (13) and along the south line of section eighteen (18) in township thirty-seven (37) north, range nine (9) west of the second (2d) principal meridian to the southeast corner of said section eighteen (18); thence running northerly along the east line of said section eighteen (18) and along the east line of section seven (7) in same township and range, to the northeast corner of the southeast quarter of said section seven (7); thence running westerly along the north line of the southeast quarter of said section seven (7) to the northwest corner of said southeast quarter of said section seven (7); thence running northerly along the east line of the northwest quarter of said section seven (7) and along the east line of the west half of section six (6) in township thirty-seven (37) north, range nine (9) west of the second principal meridian to the intersection of said line with the meander line of the south shore of Lake Michigan; thence running northwesterly along the meanderings of the south shore of said lake to the intersection of said meander line with the Indiana and Illinois State line; thence running southerly along said State line to the place of beginning." And said board of commissioners decided against said petition and said city appealed from said decision and eventually procured such proceeding to be transferred to the Porter circuit court, where the December term of said court for the year 1893, there was a trial of the same, resulting in a decree of said court, that said lands and territory be annexed to the said city of Hammond, and whereas such annexation of said lands to said city was wholly unnecessary for any municipal or legitimate purpose whatever, and imposed heavy and unreasonable burdens upon the property-owners and tax-payers of said territory, without their

consent and without the possibility of their being remunerated for the same or benefited in any manner whatever; and whereas, such annexation was made without the consent of said board of commissioners, but against their consent and judgment; and whereas, the said city of Hammond had under its jurisdiction, before said annexation, territory to the extent of about eight (8) square miles; and whereas, the territory so annexed consisted of about five (5) additional square miles, no part of which was in contiguity with any inhabited part of said city, but was distant from the same at least one mile; and whereas, the inhabitants of said annexed territory had and have no need whatever of municipal government, said territory being used almost exclusively for grazing and agricultural purposes, and being very thinly and sparsely settled, and no part of it having been laid out into lots with reference to the city of Hammond; now, therefore

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That such lands and territory be and the same are hereby disannexed from said city and declared to be wholly exempt and free from jurisdiction of said city, in all respects whatever, the same as if said annexation had not been made.

SEC. 2. It is further declared that an emergency exists for the immediate taking effect of this act; the same therefore shall take effect and be in force from and after its passage.

Mr. Speaker, your committee on judiciary, to which was referred House bill No. 475, introduced by Mr. Linck, has had the same under consideration, and begs leave to report the same back to the House with the recommendation that said bill do pass.

LINCK, *Chairman.*

[Endorsed:] House bill No. 475. A bill for an act to disannex certain lands and territory from the city of Ham-

mond, and declaring an emergency. Linck. February 3, 1897, read first time and referred to committee on judiciary. February 4, 1897, reported favorably.

Transcript of the record, as shown by the Senate Journal of the Sixtieth General Assembly of the State of Indiana, of the action taken by the Senate on Senate bill No. 440.

Said Journal of February 18, 1897, relative to said bill contains the following:

Senator Hubbell introduced Senate bill No. 440, entitled "A bill for an act to disannex certain lands and territory from the city of Hammond and declaring an emergency."

Read a first time and referred to the committee on judiciary.

The following further record of said bill in the Journal of March 3, 1897, is as follows:

"The committee on judiciary made the following reports:

Mr. President, a majority of your committee on judiciary, to whom was referred Senate bill No. 440, introduced by Senator Hubbell, has had the same under consideration, and begs leave to report the same back to the Senate, with the recommendation that further consideration of said bill be indefinitely postponed.

L. P. NEWBY, *Chairman.*
WATSON,
HOUGHTON,
LA FOLLETTE,
SHIVELEY,
WOOD, and
DRUMMOND.

Mr. President, a minority of your committee on judiciary, to whom was referred Senate bill No. 440, introduced by Senator Hubbell, has had the same under con-

sideration and beg leave to report the same back to the Senate with the recommendation that said bill do pass.

ELLISON.
HUBBELL.
EARLY."

The question being, Shall the minority report be substituted for the majority report?

The minority report was not substituted for the majority report.

The majority report was concurred in.

I hereby certify that the foregoing is a true, full, and complete copy of that part of the Senate Journal of the 1897 Session of the Indiana General Assembly relating to Senate bill No. 440, a bill for an act to disannex certain land and territory from the city of Hammond and declaring an emergency; a true copy of which bill is hereunto annexed and marked Exhibit "B."

Witness my hand, at Indianapolis, Indiana, this 9th day of March, 1897.

JAMES W. EGNEW,
Assistant Secretary of Senate.

EXHIBIT "B."

Senate Bill No. 440.

A bill for an act to disannex certain lands and territory from the city of Hammond, and declaring an emergency.

Whereas, the City of Hammond filed and presented its petition to the board of commissioners of Lake county at the June session thereof, for the year 1893, for the annexation of certain lands and territory described as follows, to wit: "Beginning at a point on the Indiana and Illinois

State line, which point is in the southwest corner of section number thirteen (13) in township thirty-seven (37) north, range ten (10) west of the second (2d) principal meridian; thence running easterly along the south line of said section thirteen (13) then along the south line of section eighteen (18) in township thirty-seven (37) north, range nine (9) west of the second (2d) principal meridian, to the southeast corner of said section eighteen (18); thence running northerly along the east line of said section eighteen (18) and along the east line of section seven (7) in same township and range, to the northeast corner of the southeast quarter of said section seven (7); thence running westerly along the north line of the southeast quarter of said section seven (7) to the northwest corner of said southeast quarter of said section seven (7); thence running northerly along the east line of the northwest quarter of said section seven (7) and along the east line of the west half of section six (6) in township thirty-seven (37) north, range nine (9) west of the second (2d) principal meridian to the intersection of said line with the meander line of the south shore of Lake Michigan; thence running northwesterly along the meanderings of the south shore of said lake to the intersection of said meander line with the Indiana and Illinois State line; thence running southerly along said State line to the place of beginning." And said board of commissioners decided against said petition and said city appealed from said decision and eventually procured such proceeding to be transferred to the Porter circuit court, where the December term of said court for the year 1893 there was a trial of the same, resulting in a decree of said court, that said lands and territory be annexed to the said city of Hammond, and whereas such annexation of said lands to said city was wholly unnecessary for any municipal or legitimate purpose whatever, and imposed heavy and unreasonable burdens upon the property-owners and tax-payers of said territory, without their consent and without the possibility of their being remunerated for the

same or benefited in any manner whatever; and whereas, such annexation was made without the consent of said board of commissioners, but against their consent and judgment; and whereas the said city of Hammond had under its jurisdiction, before said annexation, territory to the extent of about eight (8) square miles; and whereas the territory so annexed consisted of about five (5) additional square miles, no part of which was in contiguity with any inhabited part of said city, but was distant from the same at least one mile; and whereas, the inhabitants of said annexed territory had and have no need whatever of municipal government, said territory being used almost exclusively for grazing and agricultural purposes, and being very thinly and sparsely settled, and no part of it having been laid out into lots with reference to the city of Hammond; now, therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That such lands and territory be and the same are hereby disannexed from the said city and declared to be wholly exempt and free from jurisdiction of said city, in all respects, the same as if said annexation had not been made.

SECTION 2. It is further declared that an emergency exists for the immediate taking effect of this act; and the same, therefore, shall take effect and be in force from and after its passage.

[Endorsed:] Case No. 16,394. Supreme Court U. S., October term, 1896. Term No., 615. Caroline M. Forsyth, app't, *vs.* The City of Hammond *et al.* Suggestion as to Indiana legislative record since argument of case. Filed Mar. 15, 1897.

IN THE SUPREME COURT, OCTOBER TERM, 1896.

CAROLINE FORSYTH
vs.
CITY OF HAMMOND *et al.* } Notice.

To W. H. H. Miller and Thomas J. Merrifield, Solicitors for Caroline M. Forsyth:

You and each of you are hereby notified that on Monday, the 15th day of March, A. D. 1897, we shall present to the Supreme Court of the United States and ask its consideration of the "Suggestion as to Indiana legislative record since argument of case," a copy of which is handed you herewith. The record referred to therein is a certified copy of the proceedings of the Sixtieth General Assembly of the State of Indiana upon and with reference to House bill number 475, together with a copy of said bill, all certified to and under the seal of the secretary of state for the State of Indiana. In the event that the Court requires that this record be printed, this motion will be presented on Monday, the 22d day of March, A. D. 1897.

CHARLES H. ALDRICH,
FRANK F. REED,
E. W. CRUMPACKER,
Solicitors for City of Hammond et al.

Received copy of "Suggestion as to Indiana legislative record since argument of case," above referred to.

JOHN J. FORSYTH.

IN THE SUPREME COURT, OCTOBER TERM, 1896.

CAROLINE FORSYTH *et al.*
vs.
CITY OF HAMMOND *et al.*

Suggestion as to Indiana Legislative Record Since Argument of Case.

Since the argument of the above-entitled cause the landowners who had litigated the validity of the annexation proceedings and all questions relating thereto arising under the statutes and constitution of the State of Indiana and had been defeated by the decision of the supreme court of that State have sought relief at the hands of the legislature of the State of Indiana.

As shown by the accompanying record, the legislature, which has now adjourned, refused to enact a bill designed to *disannex* the lands in controversy, thus in effect confirming the action of the executive and judicial departments of the State government.

It has seemed just to our client that this fact should be brought to the attention of the Court without comment. We therefore submit a certified copy of the proceedings upon this bill under the seal of the secretary of the State of Indiana.

——— ———,
——— ———,
——— ———,
Solicitors for the City of Hammond.

IN THE SUPREME COURT, OCTOBER TERM, 1896.

CAROLINE FORSYTH
vs.
CITY OF HAMMOND *et al.*

Oliver L. Spaulding, Jr., being duly sworn, says that on the 11th day of March, A. D. 1897, he served copies of the within notice upon Thomas J. Merrifield by leaving a copy thereof at his office, No. 800 Old Colony building, Chicago, with John J. Forsyth, and upon W. H. H. Miller by mailing a copy to him at Indianapolis, Indiana.

OLIVER L. SPAULDING, JR.

Subscribed and sworn to before me this 11th day of March, A. D. 1897.

[SEAL.] WARREN A. DRAKE,
Notary Public.

[Endorsed:] Case No. 16,394. Supreme Court U. S., October term, 1896. Term No., 615. Caroline M. Forsyth, app't, *vs.* The City of Hammond *et al.* Proof of notice of suggestion as to Indiana legislative record since argument of case. Filed Mar. 15, 1897.

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Supreme Court of the United States.

OCTOBER TERM, A. D. 1896.

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IN THE MATTER OF THE APPLICATION OF THE CITY OF HAMMOND FOR A WRIT OF CERTIORARI

IN THE CASE OF

CAROLINE M. FORSYTH,
Appellant,

VS.

THE CITY OF HAMMOND AND WILLIAM KLEIHEGE,
TREASURER OF THE CITY OF HAMMOND,
Appellees.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MOTION TO ADVANCE CAUSE.

CHARLES H. ALDRICH,
FRANK F. REED,
E. D. CRUMPACKER,
Solicitors for City of Hammond.

Eastman Bros., Law Printers, 358 Dearborn St., Chicago.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1896.

No. 615.

CAROLINE M. FORSYTH,
Appellant,

vs.

THE CITY OF HAMMOND AND WILLIAM KLEIHEGE,
TREASURER OF THE CITY OF HAMMOND,
Appellees.

MOTION TO ADVANCE.

Now come the City of Hammond and William Kleihege, Treasurer thereof, and represent to the court that in the administration of the affairs of the said City of Hammond it is necessary that it be determined at the earliest possible date whether or not the six hundred and fifty (650) acres of land belonging to the said Caroline M. Forsyth, and embraced in the annexation proceedings, the validity of which was in issue in said cause, are actually a part of said city or not; that as heretofore set out in the petition filed herein, and shown by the proceedings in the several courts made a part thereof, the said six hundred and fifty (650) acres are part of an entire tract of twenty-eight hundred (2,800) acres annexed under the proceedings of the city council, and by the decisions of the courts of Indiana, and which annexation was held void by the decision of the United States Circuit Court of Appeals, Seventh Circuit; that said city has extended, and is proposing to extend, its jurisdiction over the

said tract so annexed, both by assessing the same for taxation, and extending drains, water-pipes and sewers, and providing for police protection, etc.; and that in order that such taxation may be uniform, and also the cost of such improvements may be properly adjusted, and not an undue proportion thereof fall upon the said twenty-one hundred and fifty (2,150) acres, and in order that pipes may be laid across this land for water, sewer and other purposes, and the general municipal improvements necessary for the health and convenience of its citizens carried forward, it is important that the questions involved be determined at an early date.

Your petitioners also show that other owners of portions of the property embraced within the said twenty-one hundred and fifty (2,150) acres, encouraged by the decision of the Circuit Court of Appeals aforesaid, although unable by reason of the amounts involved, or their citizenship, to appeal to the federal jurisdiction, refuse to pay the taxes assessed against their several tracts of land, and in this way embarrass the city in the administration of its affairs.

Your petitioners therefore state that they are advised and believe that the issues are of such a character, and the importance of an early decision so manifest, that an emergency exists which justifies this court in advancing such cause and setting the same down for an early hearing.

And your petitioners therefore pray that the said cause may be advanced and set down for an early hearing at the present term of this court.

CHARLES H. ALDRICH,
Solicitor for Petitioners.

FRANK F. REED,
E. D. CRUMPACKER,
Of Counsel.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Fred R. Mott, on oath say that I have read the above and foregoing petition to advance the above-entitled cause and set the same down for an early hearing, and know the contents thereof, and that the same is true in substance and in fact; that I am the Mayor of said City of Hammond, and as such am acquainted with the needs and purposes of said city as therein set forth, and the necessity of an early hearing of said cause to avoid great confusion and loss in the affairs of said city. And further affiant saith not.

FRED R. MOTT.

Subscribed and sworn to before me, a Notary Public in and for said county and state, this 30th day of October, A. D. 1896.

WARREN A. DRAKE,
Notary Public.